

June 26, 2008

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

RE: CC Docket No. 96-45  
Federal-State Joint Board on Universal Service  
TracFone Wireless, Inc. Petitions for Designation as An Eligible  
Telecommunications Carrier in the States of New York, Florida  
Virginia, Connecticut, Massachusetts, Alabama, North Carolina,  
Tennessee, Delaware, New Hampshire, Pennsylvania, and the  
District of Columbia

**NOTICE OF EX PARTE PRESENTATION**

Dear Ms. Dortch:

On June 24 and 25, 2008, Richard B. Salzman, Executive Vice President and General Counsel, TracFone Wireless, Inc., and I met with the following: 1) Amy Bender, Legal Advisor to Chairman Kevin J. Martin, 2) Angela E. Giancarlo, Legal Advisor to Commissioner Robert M. McDowell, 3) Scott M. Deutchman, Legal Advisor to Commissioner Michael J. Copps, 4) Scott Bergmann, Legal Advisor to Commissioner Jonathan Adelstein, 5) Wayne Leighton, Legal Advisor to Commissioner Debra Taylor Tate, Cameron Arch, legal intern, Office of Commissioner Tate, and with 6) Jeremy D. Marcus, Jennifer McKee, Randolph Clark and Nicholas Alexander, all of the Wireline Competition Bureau, Telecommunications Access Policy Division. Also, Cesar Conda of Navigators, LLC attended the meeting with Ms. Bender and Ron Christie of Navigators, LLC attended in the meeting with Mr. Leighton and Mr. Arch.

During these meetings, we discussed TracFone's efforts to obtain certifications from Public Safety Answering Points (PSAPs) that TracFone customers will be able to access 911 and E911 regardless of activation status and availability of prepaid minutes, as required by the Commission's April 11, 2008 order in this proceeding conditionally designating TracFone as an Eligible Telecommunications Carrier (23 FCC Rcd 6206). Specifically, we discussed difficulties which had arisen as a result of certain public safety organizations' perceived efforts to combine the PSAP certification requirement with a separate requirement that TracFone certify compliance with

applicable 911/E911 obligations, including obligations relating to the provision, and support of 911 and E911 service. We provided to the attendees at these meetings a presentation paper summarizing TracFone's position as well as a letter sent to Mr. Salzman, TracFone's Executive Vice President and General Counsel, by the National Emergency Number Association (NENA), the National Association of 9-1-1 Administrators, and the Association of Public Safety Communications Officials. Copies of those documents are attached hereto.

Following these meetings, Mr. Salzman and I met with representatives of NENA. During that meeting, TracFone and NENA reached an understanding with regard to the difference between the PSAP certification requirement set forth at paragraph 21 of the Commission's April 11, 2008 order, and the requirement that TracFone certify compliance with applicable 911/E911 obligations stated at paragraph 16 of that order. It was also agreed that NENA would not interfere with TracFone's efforts to obtain the required PSAP certifications regarding availability of 911 and E911 access to TracFone customers without regard to activation status or availability of prepaid minutes, nor would it advise others to do so. In addition, NENA committed to notifying its members and state affiliates, including those who are involved in the operation of PSAPs, of the important differences between the two certification requirements. Accordingly, TracFone does not believe that further Commission involvement in this matter is necessary at this time.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being filed electronically. Please direct any questions regarding this presentation to undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

Attachments

cc: Ms. Amy Bender  
Ms. Angela E. Giancarlo  
Mr. Scott M. Deutchman  
Mr. Scott Bergmann  
Mr. Wayne Leighton  
Mr. Cameron Arch  
Mr. Jeremy D. Marcus  
Ms. Jennifer McKee  
Mr. Nicholas Alexander  
Mr. Randolph Clark  
Mr. Richard B. Salzman  
Mr. Cesar Conda  
Mr. Ron Christie

**TRACFONE WIRELESS, INC.**  
**PRESENTATION TO OFFICES OF**  
**THE FEDERAL COMMUNICATIONS COMMISSION**  
**CC DOCKET NO. 96-45**  
**DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**  
**SUBJECT TO CERTAIN CONDITIONS;**  
**NEED TO CLARIFY AND ADJUST CONDITION IMPOSING**  
**PUBLIC SAFETY ANSWERING POINT CERTIFICATION**  
**JUNE 24-25, 2008**

I. PSAP certification requirement: TracFone must obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes (23 FCC Rcd 6206, at ¶ 21).

A. TracFone efforts to comply

- Assigned several in-house professionals to work with PSAPs; they have contacted state 911 coordinators; conducted in-person and conference call meetings; drafted proposed certification documents based on the language of the Commission requirement
- Engaged an outside firm (Intrado) to assist in obtaining PSAP certifications

Despite these efforts, the process is going very slowly.

B. Problem with the PSAP certification requirement -- Third Party Interference

- Third parties have attempted to interfere with PSAP certification process by encouraging PSAPs to refuse certification for reasons irrelevant to whether TracFone provides access to 911 and E911 regardless of activation status and availability of prepaid minutes.

II. NENA/APCO/NASNA Efforts to Interfere with the PSAP certification process

A. Errors and misrepresentations -- In comments on TracFone's PA ETC petition, NENA's Pennsylvania affiliate falsely stated that TracFone was the only wireline or wireless provider which does not comply with the requirements of Pennsylvania law to "collect 911 fees." In response, TracFone described public filings in which wireless providers including Verizon Wireless, Alltel, Sprint Nextel and T-Mobile stated that they do not collect 911 fees in PA. They, like TracFone, cannot and therefore, do not, collect 911 fees from their prepaid wireless customers in Pennsylvania.

B. The FCC Imposes a Condition on TracFone - In response to NENA's concerns about 911 funding, the FCC imposed the following condition on TracFone: "we

condition TracFone's designation as an ETC eligible for Lifeline support in each state on TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision, and support of, 911 and E911 service." (23 FCC Rcd 6206 at ¶ 16). Unlike the PSAP certification requirement, the obligation to certify compliance with state 911 laws is on TracFone (not on the PSAPs).

C. NENA interference with the PSAP certification process -- By e-mail of June 3, 2008, NENA, through its counsel, indicated that PSAP certification should be conditioned on state 911 funding laws ("The language of the proposed certifications does not appear to track the FCC orders as closely as NENA believes that it should, and the language is incomplete in failing to mention TracFone compliance with state law on financial support for 9-1-1." e-mail from James Hobson to Mitchell F. Brecher). In response, it was explained to NENA that PSAPs are to certify that TracFone customers have 911 and E911 access regardless of activation status and availability of prepaid minutes; and that TracFone is to certify to compliance with applicable state laws.

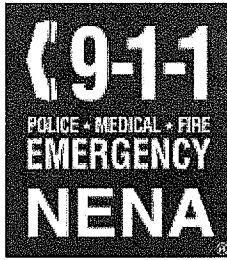
D. NENA has insisted on participating in conference calls between TracFone, its PSAP certification consultants, and PSAPs and at its annual meeting advocated that PSAPs withhold the required certification of 911 access.

E. On June 24, NENA/APCO/NASNA sent a letter to TracFone insisting on the right to receive and pre-approve TracFone's certification of compliance with the TracFone certification requirement at para. 16 of the FCC order. This is the latest example of efforts to use the TracFone certification process to forestall PSAP certification.

### III. Solution

A. FCC should **immediately** clarify that the PSAP certification requirement and the TracFone certification requirement are separate and distinct, and that PSAPs may not delay, withhold or condition certification on matters that are to be addressed in the TracFone certification.

B. 911 Funding Compliance - The Commission should commence a proceeding to examine whether state 911 funding laws are being implemented in a nondiscriminatory and competitively neutral manner. The recently-passed New and Emerging Technologies 911 Improvement Act of 2008 obligates the Commission to prepare a report on state 911 funding. Determinations of compliance with state 911 laws, including funding laws, should be made by courts and other tribunals with jurisdiction in the states to construe and apply state laws.



June 24, 2008

Rick Salzman  
EVP-General Counsel  
TracFone Wireless, Inc.  
8390 N.W. 25th Street  
Miami, FL 33122

Dear Rick:

As you know, the FCC's April 11, 2008 Order conditionally granting the petition of TracFone Wireless to be designated as an eligible telecommunications carrier (ETC) for the limited purpose of providing Lifeline service has generated some discussion in the 9-1-1 communities of the affected states. Of particular interest are two requirements for lifting the conditional status of TracFone's ETC designation: (1) the certifications from Public Safety Answering Points (PSAPs) that TracFone is "providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes" (paragraph 21) and (2) a certification from TracFone that "it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision, and support, of 911 and E911 service" in each affected state. (paragraph 16).

The language in both paragraphs 16 and 21 presents an opportunity for all interested parties to work together to assure the accuracy of the information presented to the FCC concerning full compliance with all 9-1-1/E9-1-1 obligations. This is a worthy goal that can only strengthen the affected states' respective emergency communications and 9-1-1 systems which the beneficiaries of the Lifeline program must be able to rely on.

We understand that TracFone has contracted with Intrado to move forward the process of satisfying the PSAP certification element of the FCC's requirements listed in paragraph 21. TracFone's desire to expedite this process is understandable. Overcoming the conditional status of TracFone's ETC designation also hinges on satisfying the requirements of paragraph 16. Based on the discussion of the NENA and Pennsylvania NENA Chapter comments in the Order, we believe it is clear that this includes not only E9-1-1 service provisions, but also any state obligations to collect and remit 9-1-1 fees according to applicable state laws. As any challenge to the accuracy of the certifications will only cause delay, we request that TracFone provide the state 9-1-1 programs in the

affected states with copies of its certifications to the Commission under Paragraph 16, preferably prior to filing, to allow for any potential differences in interpretation of state 9-1-1/E9-1-1 obligations, and compliance thereof, to be resolved early in the process. We also ask that each of the undersigned organizations be provided a courtesy copy of each TracFone state certification.

Please let us know if we may assist your efforts to comply with the certification requirements.

Best regards,

A handwritten signature in black ink, appearing to read 'Ron Bonneau', with a horizontal line extending to the right.

Ron Bonneau, ENP  
President  
NENA

A handwritten signature in black ink, appearing to read 'Willis Carter', with a stylized, flowing script.

Willis Carter  
President  
APCO

A handwritten signature in black ink, appearing to read 'Richard Taylor', with a stylized, flowing script.

Richard Taylor, ENP  
President  
NASNA